In the High Court of Punjab and Haryana at Chandigarh

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C.W.P. No.7704 of 2006

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Date of decision: 19.12.2006

M/s Jalandhar Coach Builders, Jalandhar

.....Petitioner

v.

Presiding Officer, Labour Court, Jalandhar and others

.....Respondents

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Coram: Hon'ble Mr. Justice S.S. Nijjar
Hon'ble Mr. Justice S.S. Saron

Present: Mr. R.S. Sharma, Advocate for the petitioner.
None for respondent No.1.
Mr. Jagjit Singh, Advocate for respondent No.2.
Mrs. Charu Tuli, Senior Deputy Advocate General, Punjab for respondent No.3.

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The petitioner M/s Jalandhar Coach Builders by way of the present petition under Articles 226/227 of the Constitution of India seeks quashing of the ex parte award dated 16.7.2004 (Annexure-P.2) passed by the learned Presiding Officer, Labour Court, Jalandhar (respondent No.1). In terms of the impugned award the termination of service of respondent No.2-workman has been held to be illegal and unjustified. The workman

has been held entitled to be reinstated in service with full back wages, continuity of services and all other service benefits.

The petitioner M/s Jalandhar Coach Builders terminated the service of respondent No.2 workman. The act of termination resulted in an industrial dispute which was referred by the State Government for adjudication to the Labour Court, Jalandhar under Section 10(1)(c) of the Industrial Disputes Act, 1947 (`Act' for short). In the statement of claim it was stated by respondent No.2 workman that he was employed by the petitioner-management as a Fitter on monthly salary and he worked for five years continuously. Thereafter, his services were terminated on 14.8.2000 without any notice, charge-sheet or inquiry due to his trade union activities. The workman served a demand notice to which no reply was given by the petitioner-management. Therefore, it was submitted that the termination of service of the workman was in violation of Sections 25-F and 25-H of the Act. The petitioner- management by an order dated 9.10.2003 passed by the Labour Court was proceeded against ex parte. By an ex parte award, the respondent No.2 was held entitled to reinstatement in service which is assailed in this petition.

Learned counsel appearing for the petitioner has submitted that it came to know of the ex parte award only after notice dated 18.8.2005 was received from the Assistant Labour Commissioner, Circle-II, Jalandhar (respondent No.3) with regard to implementation of the ex parte award. The petitioner was summoned to appear before respondent No.3 on 30.8.2005 (Annexure-P.1). Then the petitioner through its authorized representative inspected the file of the Labour Court, Jalandhar (respondent No.1) and it

was noticed that the order to proceed ex parte against the petitioner was passed on 9.10.2003. It is contended that in fact the petitioner-firm was a sole proprietorship concern of which Sh. Ranjit Singh was the proprietor and he died on 17.2.2001 and thereafter the firm was closed down. It is on account of the ex parte award being passed that the present petition has been filed on behalf of the petitioner-firm through the widow of aforesaid Sh. Ranjit Singh. Therefore, the order passed by the Labour Court (respondent No.1) is unsustainable in law and is liable to be set aside.

In response, respondent No.2 has not filed any reply to the petition. However, learned counsel appearing for respondent No.2 workman has submitted that the award dated 16.7.2004 (Annexure-P.2) passed by the Labour Court (respondent No.1) is not liable to be set aside. It is submitted that the petitioner firm has not closed down and in fact it has changed its business and now has five running buses and, therefore, the award is not liable to be set aside. It is also contended that the petitioner in fact is liable to comply with the provisions of Section 17-B of the Act as respondent No.2 workman was not gainfully employed either during the period his service had remained terminated or after the passing of the award.

We have given our thoughtful consideration to the matter. The respondent No.2 workman raised an industrial dispute with regard to his termination from service. The said dispute was referred by the appropriate Government to the Labour Court, Jalandhar (respondent No.1) under Section 10(1)(c) of the Act in terms of reference dated 22.1.2002. The stand taken by the petitioner-management is that no notice had ever been served upon it. However, the learned Labour Court (respondent No.1) drew an

inference of deemed service. A reference has been made to the order dated 9.10.2003 passed by the Presiding Officer, Labour Court, Jalandhar (respondent No.1). The said order reads as follows:-

> "9.10.2003 Present: Shri Ram Dass, for workman.
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> Notice was sent to the respondent through regd. Post on 29.5.2003. Neither R.C. nor A.D. received back. Therefore, it is presumed to have been delivered. A period of more than 30 days had elapsed. Respondent be proceeded against ex parte.
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> Ex parte evidence of the workman be produced on 30.1.2004.
>
> Sd/-
> Presiding Officer
> 9.10.2003"

A perusal of the above order would show that the Presiding Officer, Labour Court, Jalandhar (respondent No.1) had proceeded ex parte against the petitioner-firm on the premise that the registered letter had been delivered to it. However, it may be noticed that in fact Sh. Ranjit Singh, who was the sole proprietor of the petitioner-firm, had died on 17.2.2001. The demand notice was issued by respondent No.2 on 20.2.2001 in which he inter alia stated that he had been serving the petitioner for five years and was refused work w.e.f. 14.10.2000. Therefore, on the date of issuance of demand notice Ranjit Singh, who was the sole proprietor of the petitioner-firm, had died. The award dated 16.7.2004 (Annexure-P.2) passed by the Presiding Officer, Labour Court, Jalandhar (respondent No.1) does not

show whether the petitioner firm was impleaded through Shri Ranjit Singh or through his widow Smt. Kuldip Kaur. Besides, it is also not clear as to whether the notice issued by the Labour Court (respondent No.1) was issued to the petitioner firm through Smt. Kuldip Kaur or through Shri Ranjit Singh. In any case, on 9.10.2003 when the petitioner firm was ordered to be proceeded against ex parte Shri Ranjit Singh, its sole proprietor, had died. Therefore, service on a dead person cannot be deemed to have been effected. Respondent No.2 workman, as already noticed, has not filed any reply to the writ petition filed by the petitioner. Therefore, it cannot be said that the date of death of Ranjit Singh, who died on 17.2.2001, is incorrect or that the petitioner firm stood served in the proceedings before the Labour Court through Smt. Kuldip Kaur the widow of Sh. Ranjit Singh. Besides, there is no material to show whether the petitioner firm indeed has closed down or is running five buses as is contended by the learned counsel appearing for the respondent No.2-workman. Therefore, in the absence of material it would be improper to go into the question as to whether the petitioner-firm has indeed closed down after the death of Ranjit Singh or that it is running five buses.

In the circumstances, it is evident that from the impugned award and from the material placed before this Court it cannot be said that service had been effected on the petitioner-firm through Smt. Kuldip Kaur widow of Sh. Ranjit Singh. Besides, in case the petitioner-firm was impleaded through Sh. Ranjit Singh then the award cannot stand being against a dead person even on the date of service of the demand notice which was served by respondent No.2 workman on 20.2.2001. Therefore, it

would be wholly unsafe ask the petitioner to implement the ex parte award, the execution of which cannot be enforced through a dead person and, in any case, cannot be enforced without impleading the legal representatives of the deceased sole proprietor. There is no material even to show whether the petitioner-firm indeed has closed down its business or it is running five buses and has changed its vocation. Therefore, we are of the view that the ends of justice would be met by setting aside the impugned award dated 16.7.2004 (Annexure-P.2) and remitting the matter back to the Labour Court, Jalandhar (respondent No.1) for deciding the question afresh after impleading the petitioner concern through Smt. Kuldip Kaur and permitting it to file its reply to the claim raised by the respondent No.2-workman. Besides, granting opportunity of leading evidence to the respondent No.2-workman as also the petitioner concern with regard to the dispute as referred to the Labour Court, Jalandhar (respondent No.1).

For the foregoing reasons, the writ petition is allowed. The impugned award dated 16.7.2004 (Annexure-P.2) is set aside and quashed and the matter is remanded to the Labour Court, Jalandhar (respondent No.1) for adjudication of the reference of the dispute raised by the respondent No.2-workman in accordance with law after granting an opportunity to the petitioner to file its written statement through Smt. Kuldip Kaur widow of deceased Sh. Ranjit Singh and affording opportunity to the parties to lead their evidence in support of their respective stands. The parties through their counsel shall appear before the Labour Court, Jalandhar (respondent No.1) on 6.2.2007. Nothing stated herein shall be taken as an expression on the merits of the case with respect to the

controversy in dispute between the parties.

(S.S. Nijjar)
Judge

December 19, 2006.
hsp

(S.S. Saron)
Judge

Whether fit for indexing: Yes